

## Update: Adoption Proceedings Benchbook

### CHAPTER 2

#### Freeing a Child for Adoption

##### 2.13 Termination Pursuant to a Step-Parent Adoption

###### C. Grandparent Visitation

Insert the following text at the top of page 65, immediately before Section 2.14:

On July 31, 2003, the Michigan Supreme Court issued an opinion in *DeRose v DeRose*, \_\_\_ Mich \_\_\_ (2003). The Supreme Court found MCL 722.27b unconstitutional and stated the following:

“There is no indication that the statute requires deference of any sort be paid by a trial court to the decisions fit parents make for their children. Thus, like the Washington statute at issue in *Troxel v Granville*, 530 US 57 (2000)], it is for this reason, the fact that our statute fails to require that a trial court accord deference to the decisions of fit parents regarding grandparent visitation, that we find our statute is constitutionally deficient.” [Footnotes omitted.] \_\_\_ Mich at \_\_\_.

## CHAPTER 3

### Identifying the Father

#### 3.8 The Paternity Act

##### B. A Child That the “Court Has Determined to Be a Child Born or Conceived During a Marriage but Not the Issue of That Marriage”

Insert the following case summary on page 100, immediately before the case summary of *Hauser v Reilly*:

♦ ***Kaiser v Schreiber*, \_\_\_ Mich App \_\_\_ (2003)**

In *Kaiser*, the plaintiff filed an action under the Child Custody Act seeking joint legal and physical custody of his biological daughter. The mother (defendant) and the plaintiff were both married to other people at the time the child was conceived and born. The plaintiff alleged in his complaint that he was the biological father of the child. The defendant responded by admitting that the plaintiff was the child’s biological father. The parties then agreed to a temporary order for custody and visitation. Shortly after, the defendant began resisting compliance with the temporary order. She filed a motion for summary disposition indicating that the court lacked jurisdiction over a custody action where the mother was married to another at the time of conception and birth. The plaintiff filed a motion to amend his pleadings to add a claim under the Paternity Act. The trial court vacated the temporary order and granted summary disposition. On appeal, the Court of Appeals reversed the trial court, concluding that because the mother answered the complaint admitting the father’s paternity, the trial court had jurisdiction to entertain a custody action. The Court of Appeals distinguished this case from *Girard v Wagenmaker*, 437 Mich 231 (1991), indicating that in this case parentage was not disputed, but admitted. The Court provided the following summary of its decision:

“To summarize, the effect of plaintiff’s allegations in his complaint, defendant’s admissions in her answer, and the trial court’s temporary order is to establish that [the child] is not the issue of defendant’s marriage to her husband and that plaintiff is her father and not a ‘third person’ under the Child Custody Act. This confers standing upon plaintiff under the Child Custody Act and, if need be, under the Paternity Act, despite the restrictive language of the Paternity Act and the *Girard* decision, to seek custody of [the child] and establish his paternity. Furthermore, consistent with our holding in *Altman v Nelson*, 197 Mich App 467 (1992)], the mere fact that defendant could have successfully defeated plaintiff’s standing under both the Child Custody Act and the Paternity Act by disputing plaintiff’s allegation of fatherhood

is irrelevant. By defendant admitting rather than disputing plaintiff's allegation of fatherhood, plaintiff had standing under the Child Custody Act. Furthermore, the temporary order constitutes a determination that [the child] is not the issue of defendant's marriage and, therefore, confers standing upon plaintiff to commence proceedings if need be under the Paternity Act." \_\_\_\_ Mich at \_\_\_\_.

## CHAPTER 6

### Formal Placement and Action on the Adoption Petition

#### 6.1 Formal Placement of the Child

##### B. Procedural and Documentary Requirements

###### 6. “Legal Risk Placement”

Insert the following text on page 194, after the first full paragraph:

In light of the Supreme Court’s opinion in *In re JK*, 468 Mich 202 (2003), SCAO has amended form PCA 325. The amended “Notice to Adopting Parents on Pending or Potential Appeal/Rehearing” form is included in these updates and should be inserted into Appendix B, SCAO Forms. The form is also available online at <http://courts.michigan.gov/scao/courtforms/adoptions/pca325.pdf> (last visited September 30, 2003).

## CHAPTER 6

### Formal Placement and Action on the Adoption Petition

#### 6.7 Grandparent Visitation

Insert the following text at the top of page 207, immediately before Section 6.8:

On July 31, 2003, the Michigan Supreme Court issued an opinion in *DeRose v DeRose*, \_\_\_ Mich \_\_\_ (2003). The Supreme Court found MCL 722.27b unconstitutional and stated the following:

“There is no indication that the statute requires deference of any sort be paid by a trial court to the decisions fit parents make for their children. Thus, like the Washington statute at issue in *Troxel v Granville*, 530 US 57 (2000)], it is for this reason, the fact that our statute fails to require that a trial court accord deference to the decisions of fit parents regarding grandparent visitation, that we find our statute is constitutionally deficient.” [Footnotes omitted.] \_\_\_ Mich at \_\_\_.

## Appendix B: SCAO Forms

Please replace the existing SCAO Form PCA 325, “Notice to Adopting Parents on Pending or Potential Appeal/Rehearing,” with the following amended form.

Approved, SCAO

<b>STATE OF MICHIGAN</b> JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	<b>NOTICE TO ADOPTING PARENTS ON PENDING OR POTENTIAL APPEAL/REHEARING</b>	<b>FILE NO.</b>
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In the matter of \_\_\_\_\_, adoptee  
Full name of child

TO: \_\_\_\_\_

1. This notice is being given to you, the adopting parents, because this child is being placed with you:  
☐ before the period specified for filing a petition for rehearing or claim of appeal has expired.  
☐ while a decision on a petition for rehearing or appeal as of right is pending.
2. You are notified that if a petition for rehearing or claim of appeal is or has been filed, an adoption will not be ordered until one of the following occurs:
  - a. the petition for rehearing is granted, and at the rehearing the order terminating parental rights is not modified or set aside, and subsequently the period for appeal as of right to the Court of Appeals has expired without an appeal being filed.
  - b. The petition for rehearing is denied and the period for appeal as of right to the Court of Appeals has expired without an appeal being filed.
  - c. There is a decision of the Court of Appeals affirming the order terminating parental rights, the time to seek a rehearing in the Court of Appeals has expired, no rehearing or motion for rehearing is pending in the Court of Appeals, and either of the following apply:
    - i. the time for appeal to the Supreme Court has expired and no appeal is pending.
    - ii. the Supreme Court has affirmed the decision of the Court of Appeals or has denied leave to appeal, the time to seek a rehearing in the Supreme Court has expired, and no rehearing or motion for rehearing is pending in the Supreme Court.
3. You are advised that if the appeal or rehearing results in the order terminating parental rights being set aside, any orders entered that resulted in the placement with you shall be cancelled.

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of this notice was served on the adopting parents ☐ personally. ☐ by first class mail.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of agent/Family Independence Agency representative/deputy clerk

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Name of agency/Family Independence Agency/court

Do not write below this line - For court use only